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INTERNATIONAL UNION

CAMEROON

Declaration of Membership

of the International Union of Paris for the Protection of Industrial Property and of Adhesion to the Lisbon Text of the Convention

According to a communication received from the Federal Political Department, the following note was addressed by the Embassies of the Swiss Confederation in the countries of the Paris Union to the Ministries of Foreign Affairs of those countries:

(Translation)

"In compliance with the instructions of the Swiss Federal Political Department dated April 10, 1964, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the President of the Federal Republic of Cameroon in a letter of February 10, 1964, a copy of which is enclosed¹⁾, has confirmed to the Swiss Government the membership of his Country to the International Union of Paris for the Protection of Industrial Property by virtue of a declaration of application previously made in accordance with Article 16^{bis} of the International Convention for the Protection of Industrial Property.

"According to the above-mentioned letter the Government of the Federal Republic of Cameroon further declares its adhesion to the Convention of Paris, as revised at Lisbon on October 31, 1958. In application of Article 16 (3) of the said Convention, the adhesion of the Republic of Cameroon will take effect on May 10, 1964.

"With regard to its contribution to the common expenses of the International Bureau of the Union, this State is placed in the Sixth Class, for the purposes of Article 13 (8) and (9) of the Convention of Paris as revised at Lisbon."

* * *

This adhesion will bring the membership of the Union to 63 countries with effect from May 10, 1964.

MEXICO

Adhesion

to the Paris Convention for the Protection of Industrial Property (Lisbon Text)

According to a communication received from the Federal Political Department, the following note was addressed by the Embassies of the Swiss Confederation in the countries of

¹⁾ Annex omitted. (Ed.)

the Paris Union to the Ministries of Foreign Affairs of those countries:

(Translation)

"In compliance with the instructions dated April 10, 1964, of the Swiss Federal Political Department, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the Embassy of Mexico at Berne has sent to the Swiss Government on February 21, 1964, the instrument of adhesion by the United States of Mexico to the Paris Convention for the Protection of Industrial Property of March 20, 1883, as last revised at Lisbon on October 31, 1958.

"In conformity with Article 16 (3) of the said Convention, this adhesion will take effect on May 10, 1964."

NORWAY

Adhesion

to the Paris Convention for the Protection of Industrial Property (Lisbon Text)

According to a communication received from the Federal Political Department, the following note was addressed by the Embassies of the Swiss Confederation in the countries of the Paris Union to the Ministries of Foreign Affairs of those countries:

(Translation)

"In compliance with the instructions dated April 10, 1964, of the Swiss Federal Political Department, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the Royal Embassy of Norway at Berne has sent to the Swiss Government on March 13, 1964, the instrument of adhesion by Norway to the Paris Convention for the Protection of Industrial Property of March 20, 1883, as last revised at Lisbon on October 31, 1958.

"In conformity with Article 16 (3) of the said Convention, this adhesion will take effect on May 10, 1964."

* * *

The above adhesions bring the total of countries bound by the Lisbon Text of the Paris Convention to 26.

Study Group on Certificates of Authorship

(Geneva, January 27 to 30, 1964)

At the instance of the Director of BIRPI, a Study Group for the examination of the question of certificates of authorship in relation to the Paris Convention for the Protection of Industrial Property met in Geneva, at the headquarters of BIRPI, from January 27 to 30, 1964.

The Study Group was composed of experts appointed by the Governments of the following 10 States: People's Republic of Bulgaria, Czechoslovak Socialist Republic, People's Republic of Hungary, Israel, Netherlands, People's Republic of Poland, People's Republic of Rumania, United Kingdom of

Great Britain and Northern Ireland, United States of America and the Socialist Federal Republic of Yugoslavia.

Experts from the Union of the Soviet Socialist Republics attended the meeting as observers.

M. I. Anghel (Rumania) was appointed Chairman of the meeting and Mr. William Wallace (United Kingdom) Rapporteur.

The experts took, as a basis for their work, the Introductory Report prepared by the United International Bureaux, and a summary of the legislation established by the Bureaux in collaboration with the National Administrations concerned.

The exchange of views which took place and the conclusions adopted are recorded in the Report by Mr. Wallace which is reproduced below, together with the following other documents relating to the Study Group:

I. Introductory Report.

II. Summary of legislation:

1. People's Republic of Bulgaria.
2. People's Republic of Hungary.
3. People's Republic of Poland.
4. People's Republic of Rumania.
5. Czechoslovak Socialist Republic.
6. Union of Soviet Socialist Republics.
7. Socialist Federal Republic of Yugoslavia.

III. Report by Mr. Wallace, Rapporteur.

IV. Statements made during the meeting by experts and observers from the following countries:

1. People's Republic of Bulgaria.
2. People's Republic of Poland.
3. People's Republic of Rumania.
4. Czechoslovak Socialist Republic.
5. Socialist Federal Republic of Yugoslavia.
6. Union of Soviet Socialist Republics.

V. List of participants.

I. Introductory Report¹⁾

1. — At the Diplomatic Conference of Lisbon (October 6 to 31, 1958) for the Revision of the Paris Convention for the Protection of Industrial Property, the Delegation of the People's Republic of Rumania laid before the Second (Patents) Commission²⁾ the proposal to incorporate the words "certificates of authorship" in Article 1 (4) of the Paris Convention.

Subsequently, the same Delegation put forward a fresh proposal aimed, this time, at modifying Article 1 (2) by introducing the words "certificates of authorship" after the words "the protection of industrial property is concerned with patents". This last proposal also aimed at introducing the same principle into Article 12 (1) and (2) (a) and provided for the introduction of an additional paragraph to Article 4, or for a new Article, to read as follows: "Within the meaning of Article 4, applications for certificates of authorship shall be equivalent to applications for patents."

The Delegations of the People's Republic of Bulgaria, the Czechoslovak Socialist Republic, the People's Republic of

Poland and the People's Federal Republic of Yugoslavia supported these proposals, whereas the other delegations which took part in the discussions, in particular those of Israel, the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America, considered that the problem called for a thorough examination and could not usefully be discussed immediately.

Consequently, the majority of the Commission agreed that the Rumanian proposal could not be sufficiently studied for a decision to be taken on its merits in the course of the session of the Lisbon Conference, and accordingly decided not to accept the Rumanian proposal because of their inadequate knowledge of the matter, it being understood, however, that this decision in no way implied the rejection of the substance of the proposal.

The General Commission of the Conference then took note of the fact that the Second Commission decided not to accept this proposal and had pointed out that its decision had been taken without prejudice to the substance of the proposal, but solely on account of the lack of adequate data and knowledge at its disposal.

2. — BIRPI have decided to convene a study group in Geneva from January 27 to 30, 1964, for the purpose of undertaking the examination of the question of certificates of authorship in relation to the Paris Convention for the Protection of Industrial Property. The present document has been prepared by BIRPI for use by the study group; this will be completed later by a survey of comparative law based on the legislative systems dealing with certificates of authorship in use in certain member or non-member States of the Union.

As will be shown in this survey of comparative law, some legislations offer the inventor the choice of obtaining either a patent or a certificate of authorship for his invention. In the case of some types of invention, however, patents are not available and he may only be granted a certificate of authorship.

In other cases, a certificate of authorship may be granted for schemes for technical rationalization, improvements, innovations or perfections which are not, or do not necessarily constitute, industrial inventions³⁾.

3. — The study group is obviously not called upon to pronounce judgment on the advantages or disadvantages of legislations which provide for the granting of certificates of authorship, each State settling this question on the basis of its particular concepts and interests.

On the other hand, the study group is requested to take into account the existence, in certain States, of a legislative system that allows the grant of certificates of authorship for specified subjects, and of the possible adoption of a similar system by other States.

Consequently, the task of the study group would be to examine the possibility of establishing provisions, *on the inter-*

²⁾ See *Actes de la Conférence de Lisbonne*, pp. 496-500 and 533-534 (French text only).

³⁾ The discussions of the Committee of Experts has shown that the certificate of authorship does not, at the present time, deal with those proposals for which another system of reward is provided.

¹⁾ BIRPI document No. PJ/27/2.

national level, for certificates of authorship and especially the possibility of introducing the notion of certificates of authorship in the Paris Convention, or in an additional Protocol to the Convention, or again, in a separate Arrangement.

4. — (a) The basic question appears to be that of ascertaining whether the subject for which certificates of authorship are granted is one that may be considered a subject of industrial property within the meaning of the Paris Convention.

(b) A subsidiary question to be considered in this connection would be to determine whether the Convention would cover not only certificates of authorship granted for industrial inventions, but also schemes for technical rationalization, improvements, innovations or perfections that do not constitute industrial inventions as such.

(c) In the study of these questions, it will be necessary to keep in mind that the two main objectives of the Paris Convention are: first, to ensure that, within each of the States Members of the Union, the national protection in respect to industrial property applied to its own subjects be similarly applied to the nationals of each of the other States of the Union, or to those assimilated thereto; and secondly, to establish uniform international regulations on specific points, such as, in particular, that concerning the right of priority for the deposit of an application for protection.

(d) With regard to national treatment, it will be necessary to investigate whether the protection granted by some States to their nationals by virtue of certificates of authorship, or the advantages provided thereby, possess an equally real and practical value for nationals of another State Member of the Union, or to persons assimilated to such nationals.

(e) As to uniform international regulations, especially those governing rights of priority, the first question that arises is that of ascertaining whether the regulations applicable to patents can equally be applied to certificates of authorship, either in whole or in part, or with certain adaptations. In those States of the Union which issue certificates of authorship, is an application for the grant of such certificates sufficiently specific and detailed for the said certificate to serve as the basis for a right of priority for an application for a patent (cf. Art. 4 H of the Paris Convention)? Does the application for a patent constitute, *without practical difficulties*, a sufficient basis for a priority for the filing of an application for a certificate of authorship in the States of the Union which issue such certificates? If the replies to these questions are in the affirmative, it could be admitted that an application for a certificate of authorship may be based on a right of priority derived from the filing of an application for a patent or for a utility model, and vice versa (see Art. 4 E 2 of the Paris Convention).

5. — In the course of the examination of the above questions, the study group may wish to consider each question of detail dealt with under the various provisions of the Paris Convention in order to decide on their practical bearing on the question of certificates of authorship; these are, for example:

- provisions governing the right of priority:
 - period of priority (Art. 4 C);
 - proofs of previous filing (Art. 4 D);
 - multiple priorities (Art. 4 F);
 - division of applications containing more than one invention (Art. 4 G);
- provisions governing other questions:
 - independence of protection in the various countries (Art. 4^{bis});
 - moral rights of the inventor (Art. 4^{ter});
 - refusal or invalidation of protection on the grounds of restrictions on the sale of the product in which the patented invention is employed (Art. 4^{quater});
 - importation of products in which the patented invention is employed (Art. 5 A [1]);
 - compulsory licences (Art. 5 A [2]);
 - indication or mention of the patent on goods in which the patented invention is employed (Art. 5 D);
 - questions dealt with under Articles 5^{bis}, 5^{ter}, 5^{quater} and 11;
 - obligations, particularly in regard to publicity, of national industrial property services (Art. 12 [1] and [2] [a]).

6. — If the study group considers that the regulations provided by the Convention in the case of patents are not applicable to certificates of authorship, but that, on the other hand, it has been clearly established that the subject of certificates of authorship is a subject of industrial property, the following fresh question arises: What kind of *sui generis* regulation should be provided in the Convention for certificates of authorship?

7. — If the study group considers that international regulations can be devised for certificates of authorship within the framework of the Paris Union, either by applying, with possible adaptations, to certificates of authorship the rules provided for patents, or, on the other hand, by the establishment of special regulations, it will have to decide on the different procedures that can be envisaged to this effect.

A possible solution might be that of introducing amendments, or a new set of regulations, into the existing text of the Paris Convention.

However, in order to amend the Paris Convention, one would have to wait for a revision conference as provided for in Article 14; such a conference, however, is not scheduled in the next years, except for purely administrative matters. In any case, proposals for amendments must obtain the unanimous support of the States Members of the Union taking part in the Conference.

Another possibility would be to provide for an additional Protocol to the Paris Convention, a draft of which could be submitted to a forthcoming Diplomatic Conference on Intellectual Property; this solution would provide a means for such States Members of the Union, which desired to do so, to accede thereto, until such time as the Convention itself may be amended.

A third possibility would consist of providing for a separate Agreement, as foreseen under Article 15 of the Paris Convention, for certificates of authorship.

With regard to these last alternatives, the study group would also have to examine the question of what the consequences would be if not all but only some of the States Members of the Union were to accede to the proposed Protocol or Agreement.

8. — This working document will be completed by a survey of comparative law based on the legislative systems dealing with certificates of authorship. This survey will be sent to the members of the study group in the course of January 1964.

II. Summary of Legislation¹⁾

The present document contains a brief summary of the laws of the following countries with regard to certificates of authorship granted to inventors and related questions:

People's Republic of Bulgaria
 People's Republic of Hungary
 People's Republic of Poland
 People's Republic of Rumania
 Czechoslovak Socialist Republic
 Union of Soviet Socialist Republics
 Socialist Federal Republic of Yugoslavia

The summaries are completed by the statements made by the experts and observers (see page 79 *et seq.*).

1. PEOPLE'S REPUBLIC OF BULGARIA

Legislation

Law No. 10 of February 3, 1961, on Discoveries, Inventions, and Schemes for Rationalization.

Regulation No. 41 of March 2, 1961, for the implementing of the above-mentioned Law of 1961.

The Concept of Certificates of Authorship

The author of an invention shall be entitled to the recognition of his creative activities by the grant either of a patent or of a certificate of authorship.

Inventions may be the object of either a patent or a certificate of authorship.

The term "invention" implies "the original solution of a technical problem, whatever its nature or scope, such as national economy, culture, public health, national defence, etc. This solution must mark a progress over the previous level and constitute a substantial innovation capable of producing positive results, under given circumstances, either in the present or in the future" (Law of 1961, Art. 8).

Patents are valid for fifteen years from the date of application and entail recognition of exclusive rights to the author of an invention.

"On the issue of a certificate of authorship, the right to exploit the invention belongs to the State, whereas the author's rights are preserved in the form of compensation or privileges."

Furthermore "in order to ensure, in foreign countries, the protection of the rights of the State and of the inventors, certificates of authorship are assimilated to patents" (Law of 1961, Art. 10).

When a patent is granted for an invention which proves to be "of significant importance to the national economy, and no mutual agreement can be arrived at with the patentee on the assignment of his rights of exploitation of his invention to a State organization, the President of the Committee of Technical Progress shall have the power to substitute a certificate of authorship for the said patent. The same procedure shall be applied in the event of the non-working by the patentee of his invention within the period of three years dating from the grant of the patent" (Law of 1961, Art. 11).

"Authors' Diplomas" and "Authors' Attestations" also mentioned in the Bulgarian Law differ totally from authors' certificates. The former apply to discoveries of a scientific nature, and the latter, to schemes of rationalization, that is to say, improvements within the purely local framework of enterprises. Authors' attestations are, in fact, issued by the enterprise concerned or by the Ministry to which it is subordinated.

The Status of Certificates of Authorship

Neither certificates of authorship nor patents are granted for "chemically produced substances". These are only granted for new processes by which such substances can be produced.

Certificates of authorship may be issued for "medicines, condiments and foodstuffs not chemically produced". Patents, however, only are granted for new methods of production of such substances.

Finally, only certificates of authorship, and not patents, are issued in the following cases:

- (a) when an invention has been made in connection with the work of the inventor in a State enterprise or organization, whether co-operative or public, including institutes of scientific research, construction offices, etc. — or when an invention has been made by their order;
- (b) when the inventor has been the recipient of financial aid or has received material assistance from a State organization, whether co-operative or public, for making his invention;
- (c) when the invention consists of a new method of prophylaxis, diagnosis, or treatment of disease already tested and approved of in practice by the competent authorities, in conformity with the normal procedure;
- (d) when the invention consists of the creation of a new species or new agricultural process, or of a new breed of animal.

An additional invention is entitled to a certificate of authorship when it represents an improvement to an invention for which a principal certificate of authorship has been issued within fifteen years.

If the main invention was granted a patent, the additional invention may be granted either a patent of addition or an additional certificate of authorship at the choice of the applicant, always within the limit of fifteen years. Both the

¹⁾ BIRPI Documents Nos. PJ/27/3, PJ/27/4 and PJ/27/7.

certificate of authorship or the patent of addition are granted for the same duration as the basic certificate of authorship or patent.

The declaration of an additional invention made by the author of the main invention within the period of six months from the date of issue of the main certificate of authorship or patent, enjoys priority over the declarations in respect of the said additional invention made by third parties.

If, for reasons independent of the additional invention, the main certificate of authorship or the main patent were to be invalidated, the additional certificates of authorship or the patents of addition become the main certificates of authorship or patents; however, the patent of addition only remains valid for the term of protection granted to the original patent.

Procedure for obtaining Certificates of Authorship

The application for a certificate of authorship must be filed with the Institute of Rationalization by the author or his heirs, or by the enterprise whose services he has solicited.

An application may only refer to a single invention.

It must contain a description of the invention accompanied by the requisite plans, the particulars of the author's nationality, address, place of work, and the name of the invention. The description and diagrams must define clearly and explicitly the nature of the invention in order to prove its novelty and the possibilities of its being applied in practice. The application is submitted in a single copy; the description and plans are submitted in three copies. The latter must bear the signature of the author, of his heirs or an authorized person. Should the application be incomplete, the Institute of Rationalization grants the applicant a month's grace within which to complete it.

Within the space of ten days from the date of filing of the application, the Institute of Rationalization delivers a receipt to the applicant; this bears the name and nationality of the inventor, the date of filing of the declaration, together with the name of the invention.

Priority is governed by the date appearing on the application.

If the descriptions and plans are lacking, or if the documentation proves insufficient to provide a complete disclosure of the substance of the invention, priority dates from the day on which the requisite additional documents have been filed.

During the course of the month following the filing of his application with the Institute of Rationalization, the applicant is entitled to complete or amend descriptions and plans without modifying the basis of his application. Should the supplementary documents modify the nature of the application, the latter will be accepted as an independent application, and the date granting priority thereto will be that of the filing of the supplementary documents with the Institute of Rationalization.

The Institute of Rationalization examines an invention from the dual point of view of its utility and its novelty. Its utility is determined not only in terms of its immediate employment, but also in terms of its future employment, once

the conditions required for its practical applications are fulfilled.

Its novelty is assessed by taking into account certificates of authorship and patents issued to Bulgarian and foreign inventors, the applications which have been filed, local and foreign documentation, accounts published by scientific and technical organizations, work of construction offices, work subsidized by competitions and theses, together with information on the application of the invention (Rules of Application, Art. 24 to 28).

The Institute of Rationalization may summon the authors of inventions to participate in the examination of their application. In this event, the inventor is paid the amount of his gross previous month's salary which must not be inferior to the rate of pay allotted for his work by the enterprise.

Within a period not exceeding four months from the filing of his application, the Institute of Rationalization must inform the author of the invention of its decision, and either grant or refuse the granting of a certificate of authorship.

The decision to refuse the grant of a certificate of authorship must be supported by an indication of the reasons therefore.

The author has right of access to all the documents on which the refusal of the Institute of Rationalization is based. He is entitled to file an appeal against the decision with the Institute of Rationalization within one month from the date of the refusal or from the date on which the documents on which the said decision was based were communicated to him.

This appeal must be examined within the period of one month from the date on which it was filed.

The decision of the Director of the Institute of Rationalization is final and cannot be revoked.

On the issue of the certificate of authorship, the latter is recorded in the "State Register of Inventions of the People's Republic of Bulgaria". The certificate delivered to the inventor is published in the *Bulletin* of Inventions and must contain a description of the invention (Rules, paragraph 30).

Revocation and Litigation

Certificates of authorship can be revoked under the same conditions as patents, if it has been established that the certificate was not delivered to the true author or that the invention lacks novelty (Law of 1961, Art. 12 to 18).

Disputes concerning the novelty of an invention are settled by a final decision of the Institute of Rationalization. Disputes concerning the establishment of the authorship of an invention are dealt with by the Municipal Tribunal of Sofia (Law of 1961, Art. 16 and 17; Rules, paras. 31-32).

Rights and Privileges of Holders of Certificates of Authorship

Inventors who are granted certificates of authorship for an invention enjoy, in addition to remuneration calculated according to the terms fixed by the laws and regulations in proportion to the economic value of the invention, the following rights and privileges:

(a) the title of inventor is conferred on them;

- (b) all other conditions being equal, inventors are granted priority for admission into establishments of secondary or higher education within professional organisations — a priority which is extended to their children; they are also entitled to priority in competitions organized by institutes of scientific research, for their specialization whether within the country or abroad, and for the award of scholarships;
- (c) they are entitled to a greater cubic space of accommodation on the same footing as a scientist, namely, an extra room to that prescribed in the housing regulations;
- (d) they are entitled to an additional fortnight (twelve working days) in addition to their annual paid holidays;
- (e) in the case of an important discovery or invention, its author may request that the discovery or invention bear his name.

Any invention applied in practice, together with the cash payments connected therewith, are recorded in the workers' pass-book of the inventor.

Fiscal Provisions

"Remuneration paid for inventions for which a certificate of authorship has been granted is exempt from taxation."

Foreigners' Rights

Subject to reciprocity, foreign authors of discoveries, inventions and schemes of rationalization, are entitled to the rights prescribed by the Law and the Regulations.

Bulgarian citizens are authorized to register and exploit their inventions abroad only with the prior consent of the President of the Committee of Technical Progress.

The licensing of Bulgarian inventions to foreign enterprises or individuals, with a view to their exploitation, is admissible with the consent of the President of the Committee of Technical Progress (Law of 1961, Art. 20).

2. PEOPLE'S REPUBLIC OF HUNGARY

Note

The system of certificates of authorship for State operated inventions was abolished by Decree No. 38/1957 dated June 23, 1957. Consequently, Hungary no longer possesses any alternative to the patent system, of which the most recent revision is that contained in *Decree No. 29/1959 dated May 10, 1959*, which deals in particular with the system of patents governing State inventions.

Only temporary provisions governing certificates of authorship are contained in the Law; the said provisions read as follow:

"The provisions of Decree No. 38/1957 dated June 23, 1957, shall be applicable to innovations or inventions for which the contract for their practical application had already been concluded before the date of entry into force of the present Decree, or which were applied after June 23, 1957.

"Should the Ministerial declaration of acceptance not have been received by the National Office of Inventions by June 23, 1957, the application shall be deemed to be an ap-

plication for the grant of a patent, with a provision exempting the applicant from filing fees.

"Should the National Office of Inventions have granted a certificate of authorship by June 23, 1957, but if the invention has not already be exploited by the State, and if the State does not intend to take steps to exploit the said invention within the period of six months, then the inventor shall have the right, within the framework of the existing legislation, to exploit his invention or to make also a contract for its exploitation by a private individual" (Section 38, paragraphs 3, 4 and 5).

In the case of innovations, the Law provides for the issue of a diploma; the diploma, however, differs in character from patents granted for inventions, or from the former certificate of authorship, since innovations are of relevance only within the purely local framework of the enterprise concerned.

3. PEOPLE'S REPUBLIC OF POLAND

Legislation

Ordinance of October 12, 1950, concerning Employees' Inventions (see *Prop. ind.*, 1951, pp. 172-174).

Law of May 31, 1962, on jurisprudence concerning inventions (see *Industrial Property*, 1962, pp. 278-286).

Decree No. 74 of February 5, 1963, of the Council of Ministers (no translation yet available).

Ordinance of October 8, 1963, of the Council of Ministers relating to Funds for Technical and Economic Progress.

The Concept of Certificates of Authorship

The Law of May 31, 1962, provides for the grant of patents and certificates of authorship for inventions. The Law defines an invention as "the new solution of a technical problem which can be utilized in the national economy or in the sphere of national defence, or which could be so utilized in specific conditions (Art. 13).

The ownership of the invention and the exclusive right to exploit it are granted by the patent (Art. 15 and 19).

The title of author of an invention is confirmed by the grant to the author, or co-authors, of a certificate of authorship. The author(s) is the person or persons who made the invention.

Status of the Certificate of Authorship and Conditions of Grant

Patents and certificates of authorship are granted by the Patent Office of the People's Republic of Poland; they are entered in the Register of Patents (Art. 16).

When an invention has already been patented or registered abroad, the certificate of authorship is granted at the request only of the applicant for the patent or the registration thereof (Art. 14).

The certificate of authorship is granted to the rightful claimant at the same time as the patent grant unless the patent was granted abroad.

The applicant for a patent for an invention of which he is not the author, must name the inventor in his application, and must state the grounds on which he bases his claim to a patent for himself.

The description of the patent forms an integral part of the grant and of the certificate of authorship (Art. 39). The grant of a patent and of a certificate of authorship is published in the official records of the Patent Office (Art. 42).

The grant of patents and certificates of authorship can only be made in respect of a new invention; an invention is not considered new when it has been published in Poland or abroad, or publicly exploited in Poland, previous to the date determining the priority of the patent; or if it has been publicly exhibited in such a way as to give specialists sufficient information for them to use it.

The foregoing provision is not, however, applicable if the publication of the invention took place in a sector of the national economy within six months before the filing of the application for a patent with the Patent Office (Art. 17).

Patents and certificates of authorship cannot be granted for:

- (1) inventions the exploitation of which would be contrary to the laws in force or to public order;
- (2) foodstuffs, pharmaceutical products and chemically manufactured products.

On the other hand, patents and certificates of authorship may be granted for the processes of manufacture of foodstuffs and pharmaceutical products, and chemically manufactured products. The mere combination, however, of the component parts of a product is not considered a manufacturing process, as such, of foodstuffs and pharmaceutical products.

When an invention has been made in the execution of an order, or with the aid of a sector of the national economy, or made by an employee of such a sector in the course of his employment, or in connection with his work within the said sector, it ranks as an employee's invention.

An employee's invention is the property of the State, notwithstanding the fact that the employee is the author or co-author of the invention.

The right to apply for the grant of a patent in favour of the State for an employee's invention belongs to the competent Minister or to the sector of the national economy in which the invention was declared, or where it is first exploited (Art. 23).

If, however, the Minister of the sector of the national economy has not applied for a patent and the author of the invention considers that his project genuinely contains the characteristics of an invention, he may apply for a patent from the Patent Office.

But the author of an employee's invention has the right, when the enterprise has secured a patent, to the grant of a certificate of authorship (Enactment of October 12, 1950, Art. 5). The legal provisions governing patents of addition are also applicable to certificates of authorship (Art. 20 and 21).

Revocation and Litigation

The legal provisions on the subject of revocation of patents and the litigation which may arise therefrom are also applicable to certificates of authorship.

Privileges granted by Certificates of Authorship

The holders of certificates of authorship are entitled to remuneration calculated on the basis of the economic importance of the invention.

4. PEOPLE'S REPUBLIC OF RUMANIA

Legislation

Regulation concerning the organisation and functioning of the General Directorate of Metrology, Standards and Inventions, approved by Decision of the Council of Ministers No. 1164/1958 (Art. 1, para. 1 and letter d; Art. 2, para. 1; Art. 17; Art. 26 to 32 inclusive).

Regulation concerning the Certificate of Authorship, approved by Decision of the Council of Ministers No. 943/1950 (Art. 5 and 7 to 18 inclusive; Art. 60 and 61).

Decree No. 120/1955 (Art. 8 and 9).

Regulation on Innovations, approved by Decision of the Council of Ministers No. 2267/1953, as amended by the Decision of the Council of Ministers No. 1481/1957 (concerning the provisions regarding the certificate of authorship).

The provisions contained in the Regulation on Innovations which concern the bodies dealing with inventions and innovations and their functions, working procedure, application, extension and application by way of generalization, limits of financial competence regarding compensation and expenses, funds, financial means, computation of the amount of compensation, increase of this amount, reimbursement of costs and payment for work done by the authors, as well as other provisions on support for the activities of innovators, are equally applicable to inventions, in so far as they are not contrary to the provisions of the Regulations concerning inventions.

Law on Patents of January 17, 1906, and the Regulations thereunder of April 21, 1906.

Decree No. 324/1955 concerning fees for inventions, with the amendments provided by Decree No. 468/1956.

Competent State Authority for Inventions

In the People's Republic of Rumania the sphere concerning inventions is controlled by the State Office for Inventions of the General Directorate of Metrology, Standards and Inventions.

The various names given to the competent State office for inventions in legal provisions appearing up to 1957 (Committee for Inventions and Discoveries, Directorate of Inventions and Innovations, State Office of Standards and Inventions) are implicitly replaced by the present name: State Office for Inventions.

Status of the Certificate of Authorship

In the People's Republic of Rumania, rights in inventions are protected by certificates of authorship and by patents which are issued by the State Office for Inventions. The inventor has the right to elect one or other of these forms of protection — certificate of authorship or patent.

However, when the invention has been made at the request or with the help of State bodies, the inventor will be granted a certificate of authorship.

When the invention is the result of collective experience or practice and cannot be attributed to the creative work of specific individuals, the certificate of authorship is granted to the socialist enterprise within which the invention has been made.

A certificate of authorship will also be granted where the inventor offers his invention to the State and it, through an interested ministry, agrees to use it.

When an inventor offers his invention to the State and asks for a certificate of authorship, or when the invention has been made at the request or with the help of State bodies, the total and exclusive rights of the invention are vested in the State through the intermediary of the interested ministries. In these cases there shall be granted:

- certificates of authorship, to inventors;
- patents, to the ministry or the central institution which has agreed to use the invention.

*Regulations governing the Certificate of Authorship,
Procedure of Registration, Examination and Grant
Publication*

Applications for the grant of certificates of authorship are registered directly and solely with the State Office for Inventions.

The date of the invention (date of deposit) shall be deemed to be the date (the year, the month, the day and the hour) of registration of the application with the State Office for Inventions.

If the specification or the drawings of the invention have not been attached to the application, the date of deposit of these documents shall be deemed to be the date of the invention.

The application for the grant of a certificate of authorship shall be made by the inventor or by his successors in title.

Applications are subject to an examination according to the statutory conditions required for a regular deposit, and are registered in the sole register of inventions, at the State Office for Inventions, when the statutory conditions (application in due form, specification with claims, explanatory drawings) have been fulfilled.

After registration in the sole register, one copy of the specification and of the explanatory drawings are forwarded to the interested ministry, so that the usefulness of the invention and the possibilities of production may be studied, as well as for the purposes of experiment and application.

The second copy of the specification and of the explanatory drawings, which make up the file on the invention, are forwarded to one of the research services of the State Office for Inventions to ascertain the elements of novelty and technical progress which are examined in relation to the level reached by technique and progress throughout the world at the date of deposit of the invention.

After the registration, the State Office for Inventions confirms to the author the receipt of the application regarding the invention.

The Ministry concerned, to which the invention has been sent, confirms the receipt and informs the inventor, within 45 days from the entry into force of the registration if it has been admitted for experiment. At the same time, the depositor shall be informed of the period within which the application may eventually be accepted.

After the examination has been made and the elements of novelty and the level of technical progress in relation to the world level has been ascertained, and if the ministry concerned has indicated that it agrees to use the invention, the Commission for Inventions of the State Office for Inventions recognizes the proposal as an invention.

At the same time, it grants to the inventor a certificate of authorship and to the interested ministry a patent.

As regards the grant of a patent in the name of the State, there should be mentioned here the provisions of Article 60, paragraph 2, of the Regulation approved by Decision of the Council of Ministers No. 943/1950 and of Article 9 of Decree No. 120/1955 which establish that by registration of an application for a certificate of authorship in the State Office for Inventions the provisions of Article 15 and the following Articles of the Law on Patents of 1906 are fulfilled as regards the rights of the State in the invention.

The State shall comply with all formalities and bear all the costs of obtaining the patent and keeping it in force, and for the production, working and application of the invention.

The State may also patent the invention abroad.

Certificates of authorship and patents granted by the State Office for Inventions are published in the bulletin *Applied Metrology*. This publication gives, in the numerical order of the patents: the number of the certificate of authorship, the date of deposit of the invention, the date of grant, the date of delivery, the priorities claimed with indication of the countries, the name of the Ministry entitled to the patent, the full name of the inventor and the name of the invention.

The specification and the explanatory drawings are printed and distributed within the national territory and abroad.

Rights conferred by Certificates of Authorship

1. The inventor enjoys the following principal rights:

- (a) the right to the title of author;
- (b) the right to the grant of a certificate of authorship;
- (c) the right to have the invention used, once the application has been accepted;
- (d) the right to publicize the invention;
- (e) the right to the mention of his full name in the patent granted to the State;
- (f) the right to a financial compensation, the amount of which shall be calculated on the basis of the economic effects resulting from the application of the invention, in conformity with the established table of rates and taking into account effects of a social nature which may follow.

In the case of inventions of which the economic effects cannot be calculated, or where these effects are irrelevant in comparison with other effects, or where the application does not produce any economic effects, the amount of compensation is fixed on the basis of estimates taking into account the importance and the usefulness of the invention. Compensation for inventions for which certificates of authorship have been delivered to socialist enterprises shall be paid to the heads of those enterprises, so that the amount may be shared out among the members of the staff who have worked on and contributed to such inventions. The compensation is calculated and paid by the Ministry which has agreed to apply the invention;

- (g) the right to reimbursement of expenses incurred in the preparation of the drawings, construction plans and manufacture of the prototype, experiment and development of the invention;
- (h) the right to the difference between the old rate and the new rate adopted following the use of the invention, for a period of six months from the introduction of the new rate;
- (i) the right to priority for promotion in his appointment, to participation in professional training courses and to admission to rest homes.

2. The State, through the intermediary of the competent Ministries which have accepted the use of an invention, enjoys the following rights:

- (a) the right to use the invention on the largest possible scale and in the interests of society as a whole;
- (b) the right to obtain patents on the national territory and abroad.

3. The State, through the intermediary of the competent Ministries which have accepted the use of an invention, has the following obligations:

- (a) the obligation to use the invention which has been accepted in all enterprises where such use is necessary and possible;
- (b) the obligation to inform the inventor of the use of the invention;
- (c) the obligation to calculate and to pay within the statutory periods the amount of compensation due to the inventor;
- (d) the obligation to lend their support to inventors, to furnish them with all useful technical and legal information and to assist them in their work of development of an experiment on inventions;
- (e) the obligation to keep secret those inventions declared to be secret;
- (f) the obligation to pay the statutory fees to keep in force the patents granted to the State.

Foreigners' Rights

Foreigners can obtain certificates of authorship on the same conditions as Rumanian citizens if they offer their inventions to the People's Republic of Rumania.

Foreigners may limit the extent of their offer concerning the rights in their inventions to the territory of the People's Republic of Rumania.

Legal remedies - Juridical Bodies

Against decisions of the Commission for Inventions regarding the grant of certificates of authorship and patents granted to the State, and against decisions of Ministries regarding the calculation and payment of compensation, appeals may be made to the Appeals Commission for Inventions and Innovations at the State Office for Inventions.

Appeals regarding decisions taken by the Commission for Inventions are brought by the interested parties (the inventor and the Ministry concerned) within 30 days of the date of the communication of the decisions.

Appeals regarding the novelty of an invention for which a certificate of authorship has been granted, or for which an application for the grant of a certificate of authorship has been filed, are brought within one year from their publication in the Bulletin *Applied Metrology*.

Appeals against the amount of compensation are also brought within 30 days from the date of communication of the decision taken by the Ministry.

The decision of the Appeals Commission for Inventions are final and self-executing. These decisions may be submitted for revision only if new elements are introduced which were unknown at the time a decision was made on the appeal and which are of such a nature as to affect the decision of which revision is sought.

The right of authorship in an invention for which a certificate of authorship has been granted or applied for may be contested by any person claiming to be the true author or co-author of the invention. Appeals are brought within one year from the date of publication of the invention in the bulletin *Applied Metrology* and fall within the competence of the courts.

Fiscal Provisions

Applications for the grant of certificates of authorship are exempt from fees.

The State Office for Inventions may grant reduction of or exemption from fees if the inventor has offered the invention to the State, obtaining, however, not a certificate of authorship, but a patent.

Ministries which have agreed to use an invention shall pay in regard to the patent granted to them the statutory fees required for the registration of patent applications as well as the annual fees charged for the maintenance in force of the patent.

Note

Innovations are not inventions, but products the novelty and technical progress of which are determined in relation to conditions existing in the enterprises where they are registered. Innovations, therefore, cannot be taken into consideration as a subject in the examination of the certificate of authorship.

5. CZECHOSLOVAK SOCIALIST REPUBLIC

Legislation

The texts in force concerning the certificate of authorship are the following:

Law No. 34 of July 5, 1957 (Prop. ind., 1958, p. 86).

Decree of October 26, 1957, of the Ministry of Health.

Decree of April 17, 1958, of the Ministry of Agriculture.

Note

Certificates of authorship are issued for new methods of curing or prevention of disease, for new varieties of seeds or of plants and for the results of new methods of breeding.

In this respect, the President of the Office for Patents and Inventions in Prague, in a communication dated January 9, 1964, addressed to the Director of BIRPI, stated that:

"As regards the certificate of authorship, I would like to inform you that this is a document merely certifying the quality of author, that is to say, very different from that affording the protection of an invention in the sense of the Paris Union. The French expression applying to this document might give rise to misunderstanding. The Czechoslovak law refers to '*osvědčení o původství*', which, literally translated, means 'certificate on the quality of author' (in French: *certificat sur la qualité d'auteur*; in German: *Bescheinigung über die Urheberschaft*). On the other hand, the French term '*certificat d'auteur*' means in Czech '*původské osvědčení*' (*Urheberschein*), which is a document affording the same kind of protection as a patent of invention. This document is provided for by the legislation of some countries, for example, the Soviet Union and Bulgaria, but not yet by that of Czechoslovakia."

Article 24 of the Law of July 5, 1957, provides that foreigners shall enjoy the same rights and the same obligations as Czech nationals, subject to reciprocity.

6. UNION OF SOVIET SOCIALIST REPUBLICS

Legislation

Ordinance on Discoveries, Inventions and Rationalization Proposals of April 24, 1959 (La Propriété industrielle, 1959, p. 241).

Instructions on Remuneration for Discoveries, Inventions and Rationalization Proposals of April 24, 1959 (La Propriété industrielle, 1960, p. 3).

Decree No. 435 of the Council of Ministers of the USSR giving effect to the Ordinance on Discoveries, Inventions and Rationalization Proposals and to Instructions on Remuneration for Discoveries, Inventions and Rationalization Proposals of April 24, 1959 (La Propriété industrielle, 1960, p. 7).

Ordinance of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR, No. 531, May 20, 1960, on Measures for the Improvement of the Introduction of Inventions and Rationalization Proposals into the National Economy.

Principles of the Civil Law of the USSR and the Union Republics approved by the Supreme Soviet of the USSR, on December 8, 1961 (Chapters 5 and 6).

The Concept of Certificates of Authorship

The title to authorship of an invention is protected by law and evidenced by certificates of authorship or patents. "Diplomas" and "Attestations" also mentioned in the laws and regulations of the USSR differ from certificates of authorship.

"Diplomas" are issued to authors of scientific discoveries. "Attestations" are issued to authors of rationalization proposals, that is to say, of innovations or improvements relevant in the local activity of an enterprise. The head of the enterprise or the Ministry controlling it grants the attestation.

Certificates of authorship are issued for inventions of essentially new solutions of technical problems and having a positive effect in the field of economy, culture, health, or national defence.

The inventor may choose either that his authorship be merely recognized, or that this recognition be coupled with exclusive rights to his invention. In the former case, a certificate of authorship is issued for the invention; in the latter, a patent.

Should the invention be the subject of a certificate of authorship, the right to exploit it belongs to the Government, which assumes the task of ensuring its proper application in State enterprises and organisations.

Co-operatives and public enterprises and organisations may use the inventions relating to their sphere of activity, on equal terms with Government enterprises and organisations.

With regard to the protection of the rights of the inventor abroad, certificates of authorship are assimilated to patents (Ordinance of 1959, Section 71).

Status of Certificates of Authorship

(a) Certificates of authorship are issued, to the exclusion of patents, in the following cases:

- (1) if the invention is made in connection with the work of the inventor in a State, co-operative or public enterprise or organisation, or in the course of his duties;
- (2) if the inventor has received pecuniary or other material aid from a State, co-operative or public enterprise or organisation for the purpose of developing his invention (Ordinance of 1959, Section 49).

(b) Neither a certificate of authorship nor a patent is granted for substances obtained by chemical processes; only new processes of manufacture of a substance may be granted a certificate of authorship or a patent.

For medical, flavouring and food substances obtained by non-chemical processes, only certificates of authorship are granted.

Certificates of authorship may be granted for methods of treating diseases only if they are new and have been employed with success.

Certificates of authorship may be granted by the Ministry of Agriculture to selectors, selection stations and stations for pedigree research for new and improved species obtained by

selection in the breeding of agricultural animals, birds, and silk-worms, or, in agriculture, in the sphere of improvement in the cultivation of plant varieties (Ordinance of 1959, Sections 4 and 5).

(c) If a certificate of authorship has already been issued for a principal invention, a supplementary invention which completes it can only be granted an additional certificate of authorship within a period of fifteen years from the date on which the principal certificate of authorship was entered in the State Register for Inventions of the USSR.

After the expiry of these fifteen years, the supplementary invention shall be considered independent and shall be granted an independent certificate of authorship.

The application relating to a supplementary invention and filed by the author of a principal invention within the time-limit of six months from the date on which the *Bulletin of Inventions* containing the publication of the principal invention was sent to the press, shall enjoy priority over an identical invention of a third party filed within this time-limit.

If a patent has been granted for a principal invention, the applicant who deposits a supplementary invention has the option of applying either for a patent of addition or an additional certificate of authorship. In the latter case, the remuneration due to the holder of the additional certificate of authorship shall be paid according to the general rules, but only after the right to utilize the principal invention has been assigned to the State.

Should the principal certificate of authorship (or the principal patent) cease to be valid for reasons which do not affect the supplementary invention, the additional certificate of authorship (or the patent of addition) shall become independent (Ordinance of 1959, Sections 51 to 53).

Procedure for obtaining Certificates of Authorship

The procedure is in principle the same as that applicable to patents (Ordinance of 1959, Sections 30 to 43 and 47).

Certificates of authorship, as well as patents, are granted in a standard form laid down by the State Committee on Discoveries and Inventions of the Council of Ministers of the USSR. Inventions which are applied in practice and compensation paid for their use are recorded in the "work-book" of the author (Ordinance of 1959, Sections 20 and 73).

Revocation and Litigation

The regulations concerning revocation and disputes are the same for certificates of authorship as for patents. These are substantially as follow:

"State enterprises, co-operative or public enterprises, organisations and institutions, and private individuals, shall have the right, within one year from the publication of the grant of a certificate of authorship (or, if there was no publication within the time-limit of one year, from the entry of the invention in the State Register for Inventions of the USSR), to contest the validity of the grant of the certificate of authorship, by proving that the invention lacks novelty, or that the true author of the invention was not the grantee. The date of publication shall be considered to be that on

which the *Bulletin of Inventions*, wherein the issue of the certificate of authorship has been published, was sent to the press.

"The Committee of Discoveries and Inventions of the Council of Ministers of the USSR shall adjudicate finally on objections based on lack of novelty of the invention for which an author's certificate was granted.

"If it appears that the subject of the invention for which a certificate of authorship had been granted was already known either wholly or partly, the Committee of Discoveries and Inventions of the Council of Ministers of the USSR shall declare the certificate of authorship granted for the said invention null and void, or shall grant to the author a new certificate of authorship with duly corrected claims.

"The revocation of the certificate of authorship or the issue of a new certificate of authorship with duly corrected claims shall be published in the *Bulletin of Inventions*.

"Disputes regarding the authorship or co-authorship of an invention shall be decided by the Courts according to established procedure. If the action arising out of a dispute as to authorship (or co-authorship) was begun before the grant of a certificate of authorship, the Committee of Discoveries and Inventions of the Council of Ministers of the USSR shall take all necessary measures preparatory to the grant of the certificate of authorship, but postpone the grant until the Court's decision.

"Decisions on the invalidity of certificates of authorship, or transfers of certificates of authorship to the true author of the invention, shall be published in the *Bulletin of Inventions*" (Ordinance of 1959, Sections 44, 45 and 46).

Rights and Privileges under Certificates of Authorship

Holders of certificates of authorship are entitled to remuneration based on terms laid down by law on the basis of economies due to the invention.

They have also a priority right to appointment as scientific assistants in research establishments or experimental undertakings relevant to their specialization.

Inventors who have presented proposals of special value to the State shall have the right to additional living space (Ordinance of 1959, Sections 76 and 77).

Fiscal Provisions

No State fee is payable for the grant of a certificate of authorship for an invention.

The compensation paid for an invention is not subject to income tax if it does not exceed the sum of 1000 roubles.

If the compensation exceeds the sum of 1000 roubles, tax is payable on the excess after deduction of 1000 roubles per invention.

Foreigners' Rights

Foreign inventors enjoy the same rights, on a basis of reciprocity, as those granted to the nationals of the USSR (Ordinance of 1959, Section 14).

7. SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA

Note

The *Law of October 31, 1960 (Prop. ind., 1961, p. 190)*, on Patents and Technical Improvements, which replaces the Law of December 1, 1948, has repealed the system of certificates of authorship for inventions.

In respect of certificates of authorship, the new Law only contains the following temporary provisions:

"Certificates of authorship issued for specified inventions in conformity with the provisions of the former Law governing inventions and technical improvements may be replaced by patents on application by certificate holders. The term of validity of such patents shall not exceed fifteen years from the date of publication of the certificate of authorship.

"The duration of the validity of a certificate of authorship issued for a secret invention shall be counted from the date of its inscription in the Register of secret inventions, and shall not exceed fifteen years.

"If the inventor, holder of a certificate of authorship, does not file an application for the conversion of his certificate of authorship into a patent, in accordance with paragraph 1 of the present Article, the said certificate of authorship shall lapse, as the case may be, at the end of fifteen years from the publication of the grant thereof, or from the date of inscription in the Register of secret inventions" (Art. 105).

"On the substitution of a patent for a certificate of authorship, the holder thereof is required to pay the fees prescribed for the maintenance of the validity of the patent. The starting point for the fulfilment of this formality shall be the year in the course of which the certificate of authorship was converted into a patent. The fees applicable thereto shall be paid in the amount prescribed for each respective year from which the patent became operative.

"The compensation due to the author of the invention protected by a certificate of authorship the utilization of which took place before the conversion of the certificate of authorship into a patent may be determined by agreement between the inventor and the beneficiary of the invention after the conversion of the certificate into a patent.

"Should no agreement be reached, the amount of compensation due shall be computed in accordance with the provisions previously in force on the assessment and determination of the compensation referred to above" (Art. 106).

The technical improvements referred to by the Law are valid only within the local framework of the enterprise concerned, and differ in nature from inventions covered by patents.

III. Report by Mr. W. Wallace, Rapporteur¹⁾

At the Diplomatic Conference held in Lisbon for the Revision of the Paris Convention, the Rumanian Delegation had proposed that the words "certificates of authorship" should be inserted in Article 1 (4) of the Convention, thus including them, for Convention purposes, in the term "pa-

tent". They also proposed that the Convention should say that, within the meaning of Article 4, applications for certificates of authorship should be equivalent to applications for patents. They were supported by a number of countries. Others took the view that there was insufficient knowledge in the majority of Convention countries of this method of protecting inventors and that the time was not ripe for acceptance of the Rumanian proposals. The Conference decided not to accept the proposals but it was made clear that this decision had been taken without prejudice to the substance of the matter and simply because of lack of adequate data and knowledge.

The Director of BIRPI accordingly convened this Study Group in order to examine the whole question of certificates of authorship in relation to the provisions of the Paris Convention. He invited those countries which had showed interest in the subject at Lisbon to nominate experts to attend the Study Group. The experts, although nominated by their Governments, acted in a personal capacity and without in any way binding Governments.

The countries which were asked to nominate experts were the following: Bulgaria (People's Rep.), Czechoslovakia (Socialist Rep.), Hungary (People's Rep.), Israel, Netherlands, Poland (People's Rep.), Rumania (People's Rep.), United Kingdom, United States of America and Yugoslavia (Socialist Federal Rep.). In addition, the USSR was invited to send observers. A list of the actual participants in the meeting is attached²⁾. It will be seen that the countries cannot be considered to be a representative cross section of the Union countries. They were not chosen on that basis. All countries which grant authors' certificates were represented, but only a comparatively small proportion of those whose traditional method of rewarding inventors is by the patent system exclusively.

On the proposal of the United States Experts, Mr. Anghel, one of the two Experts from Rumania, was appointed Chairman; the Experts of Czechoslovakia proposed that I should act as Rapporteur. The Meeting started with a general discussion of the relationship between patents and certificates of authorship and a description of how authors' certificates operate in the countries which grant them. Although the laws are not entirely identical in each of the Socialist countries, the following general principles emerged:

1. It was agreed by all Members of the Group that its work was concerned exclusively with authors' certificates granted for *inventions*. It would perhaps have been simpler to have used the expression "inventors' certificates" but since "authors' certificates" was the term which is normally used, this Report will continue to use it. It is to be understood in the sense exclusively of certificates for inventions.

2. The basis of grant of an author's certificate is an application made to the Industrial Property Office of the State concerned, i. e., the Office which is responsible for the grant of patents. The application must bear a date and must sufficiently describe the invention, with drawings if necessary, to enable others to carry it out. The description of the invention is therefore entirely similar to that of a patent.

¹⁾ BIRPI Document No. PJ/27/15/Rev.

²⁾ See Part V, p. 85.

3. The procedure as to grant and as to revocation is the same as for patents.

4. In effect, the inventor, at the same time, asks for legal protection of his invention and transfers the right of exploitation to the State in consideration of a reward based on the use made of it and on the resultant saving to the economy and in consideration of other privileges.

5. The inventor in these countries has the choice of applying either for a patent or an authors' certificate. However, for certain subject matter, such as pharmaceuticals, only authors' certificates are given and there is no option to take a patent.

6. Foreigners have the same rights to apply, alternatively for authors' certificates or for patents, as nationals of the countries concerned and they can claim the priority of their foreign application (assuming their countries are in Convention relationship) in either case. This applies to foreign corporations as well as individuals.

Details of the relevant laws are contained in working papers PJ/27/3, 4 and 7, and commentaries on them in the statements made by certain Experts (see documents PJ/27/9, 10, 12 and 13).

During this discussion, the main, and perhaps the only fundamental point of disagreement between the Experts became clear. A number of the Socialist countries' Experts took the view that the similarity between patents and authors' certificates was such that the Convention, in its present wording, in fact included authors' certificates under the term patents, and that the Paris Convention contains an exemplificative enumeration which allows the inclusion of authors' certificates among the titles of protection. The Experts from the United States, the United Kingdom, the Netherlands and Israel stressed the essential differences between the two methods of encouraging invention and rewarding inventors: the patent was a monopoly given by the State to the inventor which he was free to exploit for his own gain; the author's certificate was basically a system whereby the inventor assigned his rights to the State (except, naturally, his moral rights); he kept no monopoly rights himself and depended upon the State to give him his reward. The Experts of the latter countries therefore took the view that, although in a number of countries, e.g., the United Kingdom, Convention priority was in fact granted on the basis of authors' certificates, the Convention did not, in its present form, oblige any country to grant that priority.

However, the Study Group was in general agreement that there was no objection, in principle, to exploring ways and means of ensuring that the Convention should provide, in terms, for the mutual grant of priority as between patents and authors' certificates.

During this general discussion, the Expert from Israel drew attention to the fact that it is in Article 6 of the French law of 1791 that the notion of the authors' certificate first appears, i.e., the dedication of the invention to the State in the expectation of a reward from the State's use of it. He also pointed out that even the "exclusive rights" given by a patent are everywhere subject to some erosion, e.g., the power of the State to grant compulsory licences or otherwise

override the patent monopoly, e.g., for defence purposes, and systems where an inventor can voluntarily endorse his patent "licences of right", thus paying smaller renewal fees. The Expert from Hungary made the very important point that an acceptance of authors' certificates as patents for priority purposes would be a great encouragement for non-member countries which offered both methods of protection — patents and authors' certificates — to join the Convention.

The Meeting then agreed to discuss questions 4 to 7 of the working paper PJ/27/2. On question 4, it was agreed without dissent that the subject matter for which authors' certificates for inventions are granted might properly be considered to be industrial property within the meaning of the Convention. This was not, however, the case with the things mentioned in paragraph 4 (b) such as rationalization schemes and diplomas for discoveries since these did not protect industrial inventions as such.

On paragraph 4 (d) (the advantages offered to foreigners), the United States Expert said (and others agreed) that, although there was now more knowledge of the laws, there was very little practical experience in Western countries of the protection given in Socialist States to inventions, particularly by way of authors' certificates. He was in some doubt as to their value for foreigners. The Czechoslovak and Rumanian Experts listed some of the advantages to a foreigner in applying for this alternative method of protection for his invention, in particular:

- (1) There is no expense to the inventor.
- (2) He receives compensation if the invention is used, the minimum amount of which is prescribed by the law.
- (3) He pays no application or renewal fees and some, at least, of any reward he may get is tax free.

On the point discussed in paragraph 4 (e) — the practical difficulties, if any, in granting a patent with priority based on an author's certificate and vice versa —, it was noted that the document known in Polish law as an author's certificate may not be sufficient for this purpose and it was again stressed that to be a proper basis for priority the original document must identify and describe the invention and have a certain date. It was also agreed that the second country is always given the opportunity of deciding whether the disclosure made in the original document is sufficient to enable it to accord priority to the invention. It is therefore free to refuse priority if its officials and courts are not satisfied that the elements for which a patent is sought were revealed in the priority document.

Another possible difficulty would arise if a State, granting an authors' certificate to a foreigner, itself assumed the right to apply abroad. But the Rumanian law allows a foreign applicant for an author's certificate to reserve foreign rights to himself. In countries which adopt such a law, there should be no difficulty.

Paragraph 5 of the paper PJ/27/2 lists a number of provisions of the Convention in which patents are mentioned and the relevance of these to authors' certificates was discussed. The Expert from Israel took the view that since the Meeting was only considering the rights of priority, it was

only Article 4 that had any relevance and there was no need to consider changes in the other Articles. Others, however, felt that some of the other Articles mentioned in that paragraph might have some relevance; there was discussion, for example, on the question whether countries which demand "industrial utility" as a condition for the grant of an author's certificate (e.g., as in Article 37 of the USSR law of 1959) could accept the obligations of Article 4^{quater} of the Convention. But others said that there was a difference between the conception of industrial utility and the philosophy of Article 4^{quater} which simply demanded that patents should be granted even if the sale of the article was restricted, e.g., because of a State monopoly in the marketing of the goods concerned.

It was felt that Article 5 — compulsory licences — had probably no application to authors' certificates; nor, at present, had Article 5^{bis} — period of grace for paying renewal fees — though it might have relevance in the future should the countries which grant authors' certificates ever decide to demand renewal fees. Articles 11 and 12 probably fell to be assimilated. No final decisions on these points were taken since it was hoped that they would all be the subject of further study.

At the end of the discussion of these detailed points, the Observers from the USSR said that they were grateful to the Director of BIRPI for convening the Meeting and for inviting them to it. They had forty years' experience of the system of protecting inventions by way of authors' certificates as well as patents. When they sought patent protection in the West the specifications they submitted were identical in form to authors' certificates they granted in the Soviet Union. The fact that their patent applications were accepted showed that authors' certificates were in the same form as were patent specifications in the West.

The Meeting then considered what action should be taken in the future. The Experts from Czechoslovakia and Hungary, supported by others, suggested that the Meeting should declare:

- (a) that authors' certificates enter into the sphere of industrial property;
- (b) that authors' certificates offer a protection as required by the Convention, and
- (c) that the objects of authors' certificates and patents are identical as far as priority is concerned.

There was, however, no unanimity on this suggestion. Moreover, several Experts felt that to go so far might seem to be interpreting the Convention itself which the Meeting clearly had no power to do. Its conclusions could not bind the countries of the Union, and countries not represented by Experts at the Meeting might resent any appearance of its coming to binding conclusions. After further discussion the following general conclusions were agreed:

- (1) It was impossible for the Meeting to give an authoritative interpretation of the Convention.
- (2) It was desirable that there should be more certainty than exists at present.

- (3) There was no reason to consider the system of authors' certificates as contrary to the spirit and aims of the Paris Convention.
- (4) Some countries now, in fact, accept authors' certificates for priority purposes in the granting of patents.
- (5) Even the Experts of those countries which do not do so, and who do not believe that the Convention so requires, did not object, in principle, to consideration of the possibility of the Convention providing in clear terms for the obligation to do so.

In conclusion, the Meeting invited the Director of BIRPI to take what measures he considered appropriate (preparation of draft texts, summoning of further meetings, etc.), to this effect.

After these conclusions had been reached, the Director of BIRPI suggested that it might be advisable to aim at an amendment of the Industrial Property Convention on this point when the countries of the Union meet in Stockholm in 1967. If the necessary unanimity was not then achieved, it would be possible to fall back on a Protocol or on a Restricted Arrangement.

IV. Statements made during the Meeting by Experts and Observers from the following Countries

1. Statement by the Expert of the People's Republic of Bulgaria¹⁾

"The People's Republic of Bulgaria has several years' experience of certificates of authorship or patents, granted at the option of the inventor. This right is recognized by Articles 8 to 10 of our Law on Inventions, by which the author of an invention may request recognition of his creative activity by the issuance of a certificate of authorship or of a patent.

"An invention may form the subject-matter of either a patent or a certificate of authorship.

"By 'invention' is meant 'the creative solution of a technical problem in any sphere whatsoever: national economy, culture, public health, national defence, etc.; this solution represents an advance over the previous level, constitutes a substantial novelty and can, under certain conditions, have a positive effect at present and in the future' (Law of 1961, Art. 8).

"The patent is valid for a term of fifteen years from the date of the application and grants recognition of the exclusive right of authorship of the invention.

"Where a certificate of authorship is granted, the right of exploitation of the invention is vested in the State, while the inventor preserves his right in a form of remuneration and privileges. Moreover, in order to preserve the rights abroad of the State and the inventor, the certificate of authorship is assimilated to the patent (Law of 1961, Art. 10).

"Applications for the certificate of authorship and for the patent are made in the same manner.

We are certain that the issuance of certificates of authorship and of patents in our country is in accordance with the sense of the Paris Convention.

¹⁾ BIRPI Document No. PJ/27/13.

"Certificates of authorship granted in our country in respect of inventions for which patents are applied for abroad (for example in the United States, Great Britain, Germany, etc.) are also assimilated to patents.

"In the discussions that will follow, we ask you to take into consideration the situation prevailing in our country."

2. Statement by the Experts of the People's Republic of Poland ¹⁾

"Assuming, as a starting point for later discussions, that the invention is the development of a technical problem made by the inventor as a result of his creative genius and that this creation exists separately from the inventor, there may be observed in the laws of the various countries rules aiming in two directions. Some of these rules concern the subject-matter of the technical creation, the invention; others concern the author of the creation, the inventor.

"In the social and economic conditions existing in capitalist countries it is, in most cases, sufficient to ensure the protection of the invention. To this end, the law in these countries provides a form of protection by means of a patent. It is not surprising that the text of the Paris Convention, which has not undergone any fundamental change since 1883, bears the stamp of the requirements of that period, particularly in the field of the adoption of titles with which we are concerned here and which are granted in the various countries to persons who have made known the results of their technical creation or of the creations of other persons, and the bodies, which in those countries are competent to judge such matters, have declared that the result of this creative work constitutes an invention.

"Article 1, paragraph (4) of the Convention includes patents of importation, patents of improvement, patents and certificates of addition, and leaves the door open for other titles granted in the various countries after it has been declared, in conformity with domestic legislation, that the subject of the declaration is an invention. Article 1, paragraph (4), opens this door by the formula 'etc.'.

"That legal protection be granted to inventions only, does not conform with the principles of the socialist regime and the social-economic relations existing in this regime.

"For this reason, the laws of the socialist countries granting legal protection of the invention, also guarantee the protection of the right of its author. The outward forms of the two systems of protection in the socialist countries are not the same. While in Poland, for instance, after confirmation that the declared object constitutes an invention, a patent is granted and at the same time the inventor is given a certificate of authorship for his invention; in other countries the person declaring the invention — this is nearly always the inventor — has the right to choose between a certificate of authorship and a patent. The issuance of the patent in Poland, and also in other countries, gives the owner of the invention, the inventor or the State, the exclusive right to the invention.

"The position is different for the certificate of authorship. In Poland, the certificate of authorship confirms that

the person named in the certificate is the author of the invention. But in other countries, the certificate of authorship not only confirms that the person named in the certificate is the author of the invention, but also that the invention made by its author is at the same time the property of the State and, in these circumstances, the certificate of authorship has also the characteristics of the patent.

"The basic problem at this moment is to recognize as quickly as possible that the provisions of the Paris Convention, in their present terms, confer the same reciprocal rights on persons of member States of the Union who declare inventions, equally if they refer back to a regular prior deposit in a socialist country, which may lead to the grant of a certificate of authorship, or to an application for a patent.

"To be clear on this question, it should be stressed that the institution of certificates of authorship in respect of inventions is very closely bound to the creator of the invention.

"The grant of testimonials or certificates for proposals for rationalization have nothing in common with the certificate of authorship. They are merely documents confirming that such and such a person has made a proposal for rationalization.

"By proposal for rationalization is meant the development of a technical problem which does not represent the result of a technical creation, or even of proposals which are in no way the development of a technical problem."

3. Statement by the Expert of the People's Republic of Rumania ¹⁾

"I believe that in the first place it is my duty to express my sincere thanks to the United International Bureaux for the Protection of Intellectual Property and to their Director, Professor Bodenhausen personally, for the initiative and extraordinary attention given to the preliminary work and to the study of the problems involved, so as to ensure a proper progress of this study.

"I would like also to express my satisfaction at being able to collaborate with the experts here whose well-known ability and experience in the field of industrial property constitute a guarantee for the full understanding of the problem under review and, without any doubt, for a successful conclusion.

"As you certainly know, at the Diplomatic Conference of Lisbon in 1958, the Rumanian Delegation pointed out that there existed in the legislation of certain member countries of the Paris Union legal provision for the certificate of authorship in respect of inventions — a protection equal to that of a patent.

"Anxious, on the other hand, to see this form of protection expressly incorporated within the Act which has the force of law on an international level — the Convention of the Paris Union — so as to ensure its uniform application and to make possible reciprocal protection of inventions between the countries of the Union and, at the same time, further the adherence of other countries, whose legislation provides for certificates of authorship, the Rumanian Delegation at the Lisbon Conference proposed that the Convention

¹⁾ BIRPI Document No. PJ/27/12.

¹⁾ BIRPI Document No. PJ/27/10.

be completed by introducing the 'certificate of authorship for inventions'.

"By the proposal submitted at Lisbon in 1958, the Rumanian Delegation wished in fact to obtain for the certificate of authorship for inventions what France had obtained at The Hague Conference in 1925, when — side by side with the various kinds of patents which already existed since the establishment of the Convention — there was included in the text of paragraph (4) of Article 1 the 'certificate of addition' which meanwhile had been regulated by national legislation in France.

"The participants in the Conference, while considering the proposals of the Rumanian Delegation well-founded, nevertheless expressed their preference for the question first to be examined by a competent group, so as to avoid any confusion.

"Meanwhile, the question of certificates of authorship for inventions has become better known as a result of studies, carried out and published in *La Propriété industrielle* and *Industrial Property*, but especially through expert and documented opinions presented by bodies and personalities well-known in the field of industrial property, which we shall take the liberty of quoting later.

"Although all these circumstances, which lead to the conclusion that certificates of authorship for inventions are titles of protection to which the provisions of the Paris Convention equally apply, have facilitated the task of the Study Group, I would beg your indulgence for submitting to you, summarily, the considerations which tend to justify the conclusions to which we referred above.

"1. The certificate of authorship and the patent are two titles of protection for inventions

"From the comparative study of legislation in the various countries on the 'certificate of authorship' as a protection for inventions given over to the State, and of legislation on the 'patent' as a title of protection for inventions, it appears that the majority of the principles valid in respect of inventions are common to both these titles.

"(a) The formal conditions for the legal constitution of the deposit of inventions are identical. In all the countries, and under whatever name the title of protection for the invention is regulated — certificate of authorship or patent — it is delivered on the basis of an application filed with the competent authority.

"The application is accompanied by a description indicating the claims for novelty and inventive step, as well as by explanatory drawings, in two or three copies.

"The application filed with the competent authority establishes the date (year, month, day and hour) of the deposit of the invention, which is at the same time the date of priority of the invention.

"The application may be made not only by persons or corporations of the country itself, but also by persons or corporations of foreign countries, and the State Office at which the deposit has been made delivers a certificate confirming the deposit of the invention.

"(b) As regards the beneficiary of the legal protection, the *legislation providing for the certificate of authorship* has adopted the principle of the true author of the invention — a principle also adopted by the legislation of the Anglo-Saxon countries which recognize only one title of protection for inventions, the patent.

"Even in the case where the right to use the invention belongs to the State, it is the inventor who makes the application for the registration of its deposit and he is the only one recognized as such. Consequently, the full name of the inventor is inscribed on the certificate of authorship as it is on the patent delivered to the true inventor.

"(c) It is true that the legal protection of the certificate of authorship applies also, apart from inventions protected by patents, to those inventions which belong in the category of medicaments, medical treatments, foodstuffs produced by other than chemical processes, new kinds of plants and new kinds of animal breeds.

"In the countries where only the patent is recognized as a title of protection, these inventions do not enjoy any protection at all. So far as they are concerned, the certificate of authorship recognizes the invention, establishes its priority and assures its inventor the rights to which he is entitled, while the invention itself is put at the disposal of society as a whole.

"It should be noted at the same time that the scope of legal protection of the patent is not absolute. It is for this very reason that certain countries have granted a category of patent even for some products such as medicaments, plants, etc. Thus, France, for example, introduced the 'special patent for medicaments' and 'for plants' and there is a tendency to enlarge the sphere of protection. In any case, the validity of such a title of protection has not been questioned.

"The certificate of authorship, on the other hand, does not confer on a person or corporation an exclusive right of exploitation which would stand in the way of the invention being used in the interest of society, as is the case for the patent, but, on the contrary, the State, which is the owner of the rights in the invention, uses it for the benefit of society as a whole.

"(d) The procedure for the grant of the certificate of authorship provides for a preliminary examination as to the formality of the application — an examination common to all titles of protection — and for an examination as to the basis of the invention (novelty and inventive step on a universal level, industrial application), as is also provided for by the legislation of the countries in which patents are delivered after an examination on a universal plane as to novelty and inventive step of inventions.

"(e) Certificates of authorship which have been granted, as well as those which have been revoked, are published in the *Official Gazette* and are thus made public in the same way as patents; the descriptions of the inventions are printed and circulated within the country and abroad.

"(f) The protection of the rights of inventors and the persons and corporations interested is the subject of special administrative, civil and criminal laws.

“(g) Either on the basis of the legal provisions governing the certificate of authorship or on the basis of those governing the patent it is possible for the total and exclusive rights in the invention to be transferred to another person by the true inventor. In the case of the certificate of authorship the rights in the invention are transferred to the State, and in the case of the patent they are transferred to a person or corporation, subject to the conditions established by the national legislation.

“In conclusion, it appears from the foregoing that in regard to the application of the Paris Convention there is no essential and decisive difference between the certificate of authorship and the patent.

“The certificate of authorship is a patent adapted to the needs of the socialist system; it is the legal instrument created by socialist law, by which the exclusive right of exploitation of the invention is transferred to the socialist State which uses it for the benefit of socialist society as a whole.

“Where the inventor requests that his invention be protected by a certificate of authorship, the invention is produced, tested and manufactured by and at the expense of the State, the author enjoying the right to compensation, the amount of which is calculated on the basis of the economies and social advantages achieved through the invention, as well as certain other rights and privileges.

“Mr. Secretan, the former Director of BIRPI, in his communication to the Committee for the Development of Trade at the 1960 session of the Economic Commission for Europe (Doc. TRADE 100, Ad. 1) also reached the conclusion that the certificate of authorship is identical with the patent.

“The same conclusion is to be found in the statement made on behalf of BIRPI to the XXIVth Congress of IAPIP held in London in 1960 by the Vice-Director of BIRPI, Mr. Magnin, in connection with the report presented by Mr. Grant, the Comptroller-General of the Patent Office, in which the protection of patents in the Soviet Union had been analysed (*La Propriété industrielle*, No. 7/1960, p. 140, and *Industrial Property Quarterly*, July, 1960, p. 38).

“It is also the conclusion of Mr. János Tóth of Geneva University, as expressed in the article published in *Industrial Property*, No. 1, 1963, p. 17.

“II. The certificate of authorship in relation to the provisions of the Convention of the Paris Union. Interpretation

1. The titles of protection provided for in the Convention

“The Convention of the Paris Union for the Protection of Industrial Property contains a number of provisions which, without prejudice to the principle of the sovereignty of nations, assure the protection of the rights in inventions belonging to owners in the member countries (equality of treatment between nationals of the Union and nationals of each member State; right of priority under the Convention for a period of 12 months, etc.). The Convention having been signed before the certificate of authorship was known, at a time when the only title of protection for inventions was the patent, this is the only title explicitly mentioned as such among the different descriptions listed in Article 1, paragraph (4).

2. Interpretation of the provisions of the Convention in relation to the certificate of authorship

“Although the certificate of authorship is not explicitly mentioned among the patents listed in Article 1, paragraph (4), the provisions concerning equality of treatment granted to the nationals of the Union and the nationals of each member State, as well as those concerning the right of conventional priority, are equally applicable to the inventions protected by certificates of authorship if the following considerations are taken into account:

“1. From the analysis of the legislation of countries in which the certificate of authorship has been adopted as a title of protection for inventions, it results that foreign nationals of Unionist countries can obtain certificates of authorship under the same conditions and on the basis of the same formalities as nationals. There is no prohibition or restriction in regard to foreigners in any of this legislation, which entirely satisfies the principle of assimilation of foreigners to nationals stipulated in Article 2 of the Convention.

“2. The right of priority of the nationals of the Union, stipulated in Article 4 of the Convention, also results legally equally well from the regular deposits made by nationals requesting certificates of authorship, if the following is considered:

“(a) In conformity with the provisions of Article 1, paragraph (4), ‘among the patents’ there are included the various kinds of industrial patents admitted by the legislation of the Unionist countries, such as patents of importation, patents of improvement, patents and certificates of addition, etc.¹⁾

“From the spirit of Article 1, paragraph (4), the text of which was drafted at The Hague in 1925, at a time when the certificate of authorship was not yet known as a title of protection for invention by any legislation of the Unionist countries, it appears that the common intention of all the parties was not to limit the list of titles of protection to which the Convention refers, but to give to the term ‘patent’ a general meaning, that of a title of protection.

“The terms ‘such as’ which precedes the list, as well as the ‘etc.’ at the end of it give the text an illustrative character, and the certificate of authorship can also be listed, as was done when the certificate of addition was included in the text.

“In conformity with the provisions of Article 4, paragraph (1), the basis of the right of conventional priority for the invention depends on the existence of the regular filing of a patent application.

“The text, as revised in Lisbon in 1958, of paragraphs (2) and (3) of the same Article makes it clear that what is meant is a regular national filing recognized as such by virtue of the national legislation of each Unionist country and it is provided that ‘by a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned...’.

¹⁾ The certificates of addition were introduced into the text of the Convention at The Hague Conference in 1925, after their regulation in France.

"Consequently, so as to be able to establish whether the deposit of an invention gives rise to the right of conventional priority provided for by Article 4 of the Convention, one has to consider the national laws of the countries concerned.

"The legislations concerning the certificate of authorship establish expressly and in detail the conditions for the legal deposit of the invention, as we have already shown.

"In the People's Republic of Rumania, the filing of an application for a certificate of authorship is assimilated, by express legal provisions, to the filing of a patent application in favour of the State as regards its rights in the invention (Art. 60, para. 2 of the Regulations approved by the Decision of the Council of Ministers No. 943/1950 and Art. 9 of Decree No. 120/1955).

"This principle also conforms with the principle of recognition of the sovereignty of the member countries, which is at the basis of the Convention.

"(b) The President of the 2nd Commission at the Diplomatic Conference of Lisbon stated in regard to the proposal made by the Delegation of the People's Republic of Rumania, that 'there would be nothing to prevent certificates of authorship being submitted as priority documents to the Courts and Patent Councils of the member countries of the Union, since this is in no way excluded by the Convention' (*Acts of the Lisbon Conference, 1958, p. 498*).

"3. The other provisions of the Union Convention, particularly those prescribed by Articles 4 (C), (D), (E), (F), (G) and (H), 4^{bis}, 4^{ter}, 4^{quater}, 5 A (1) and D, 5^{ter}, 5^{quater}, 11, 12 (1) and (2) (a), establishing the conditions of the conventional right, are also fully applicable in the case of the certificate of authorship.

"4. The provisions contained in Articles 5 (2), (3) and (4), regulating the grant of compulsory licenses, have no effect in regard to certificates of authorship, since it is the State in whom the exclusive right to use the inventions is vested.

"The provisions of Article 5^{bis}, by which periods of grace are accorded for the maintenance of rights in inventions, do not apply in regard to certificates of authorship, as the certificates themselves as well as the maintenance of validity of the rights derived therefrom are exempt of fees.

"In conclusion, it follows from the foregoing that the provisions of the Convention of the Paris Union are equally applicable to the patent and to the certificate of authorship, and that the system of the certificate of authorship does not in any way impede the application of the provisions of the Paris Convention; on the contrary, this system is included in the Convention in its present form.

"Finally, I would like to apologise for having dwelt on this problem for so long, but I have done so because it is my conviction that this will contribute to the success of the study."

4. Statement by the Experts of the Socialist Republic of Czechoslovakia

"In order to determine, internationally, the legal position of certificates of authorship, a twofold examination must be

made. First, the aims of the Paris Convention and its basic principles should be determined, and, secondly, the certificate of authorship should be clearly defined.

"As to the first point, I should like to refer to document PJ/27/2, page 3, point 4, paragraphs (c) and (d), where it is stated that the two principal objectives of the Paris Convention are, on the one hand, to ensure in each country of the Union, in regard to the protection of industrial property, the national treatment of those countries for the nationals of each of the other Unionist countries or persons assimilated to them, and, on the other hand, to establish at a certain level a uniform international system, particularly in regard to the priority right in respect of the filing of the application for protection.

"As regards national treatment, mention should also be made of the advantages deriving from certificates of authorship and of their real and practical value on the international level.

"It is, in effect, the grant in each country of national treatment to the nationals of other countries and to assimilated persons, which is one of the basic principles of the Paris Convention. This is a point which was particularly emphasized by Ladas who refers to a national patent system governed by the provisions of the Convention.

"In this respect, reference might be made to paragraph (4) of Article 1 of the Paris Convention, which was inserted into the text of the Convention, at the The Hague Conference, on the basis of the principles of the Final Protocol approved at the Washington Conference of 1911.

"It follows that this provision leaves to the domestic legislation of each Unionist country the right to decide what is to be included in the notion of the patent, and the power to establish the form in which rights, based on an invention, should be protected.

"It is understandable that the domestic legislation of each country shall decide in what manner inventions should be protected. This is also true of the legislation of the socialist countries which recognize, apart from the patent, a new kind of protection for inventions which is in harmony with the social and economic system in a socialist country, that is to say, the certificate of authorship. Here I would emphasize that the author of an invention is absolutely free to request protection either in the form of a patent or in the form of a certificate of authorship. The legislation of the socialist countries thus offers a choice between a patent and a certificate of authorship and grants thereby more than the legislation of the other countries.

"As regards the certificate of authorship, I would say that this is a legal title in perfect harmony with the requirements of the Paris Convention. As to the personal rights, the certificate of authorship affords the inventor rights which, for example, Katzarov, in his book *Propriété industrielle et droit d'auteur dans l'URSS et les démocraties populaires*, at page 83, defines as improved and extended rights.

"The fact that someone is the author of an invention is officially established by the certificate of authorship. In the certificate of authorship, the inventor's name must be mentioned. The inventor benefits from other privileges on the

occasion of competitions for appointment to scientific posts, etc. Apart from personal rights, he also benefits from patrimonial rights, that is to say, he is entitled to ask the State to do everything to ensure that his invention, protected by a certificate of authorship, is produced, and, once this is done, that equitable compensation be paid to him.

"It emerges from the principle of assimilation and of national treatment that all those who benefit from the provisions of the Paris Union can naturally also benefit from the certificate of authorship. Every citizen or person assimilated thereto within the meaning of the Paris Convention is completely free to request either a patent or a certificate of authorship, and, if he requests a certificate of authorship, he will enjoy the same rights as nationals.

"Here emphasis should be laid on certain important points. Applications for patents and for certificates of authorship are filed with the same national office. As regards the right of priority, no distinction is made between the certificates of authorship and the patent. The same requirements for a duly filed application apply equally to a patent and a certificate of authorship. The right of priority originates in the same way for a patent or a certificate of authorship and, naturally, it dates from the moment when the application has been filed with the national office. Examination as to novelty is carried out in the same way, whether the application is for a patent or for a certificate of authorship. All rights granted by a certificate of authorship as by a patent can be protected by the courts in civil and criminal proceedings. The rights of appeal are the same for patents and certificates of authorship. Foreigners have the same rights and obligations as nationals, which means that, in regard to an invention, each is perfectly free to make his choice as to the type of protection to be used.

"To summarize, we can conclude that the fundamental requirements, particularly those in the Paris Convention which provide for rights of priority, are equally and completely fulfilled as regards certificates of authorship. This is the exact interpretation which must be given to the provisions of the Convention.

"Briefly, I should like to draw attention also to similar opinions which have been expressed in books, in theses and even in the speeches of the representatives of BIRPI, such as, for example, Katzarov, Ch.-L. Magnin, Grant, Secretan and others.

"From the above, it clearly emerges that the provisions of the Paris Convention, in their present wording, completely cover certificates of authorship as well, which means that, in regard to an invention, an application duly filed in conformity with the requirements of the Convention for a certificate of authorship, has the same effects from the point of view of rights and obligations established by the Convention, as an application for a patent of invention."

5. Statement by the Expert of the Federal Socialist Republic of Yugoslavia¹⁾

"At the time of the Lisbon Conference the term 'Certificate of Authorship' was still new and little known in a great

number of countries belonging to the Paris Union. I believe this is the reason why certain delegations were opposed to the Rumanian proposal to introduce this term into the text of the Convention.

"The real question is to establish whether the certificate of authorship represents a type of protection of industrial property outside of the Convention, or whether it is already included within its provisions.

"The International Bureau has compiled a very clear 'Summary of Laws' and has been good enough to transmit this to us in document PJ/27/3 of January 10. From the provisions of the laws of the countries which have adopted the system of protection of inventions by certificates of authorship it is evident that for the grant of protection through these certificates the same criteria are applied as for patents. There is only one difference, and this is in the area of patrimonial rights, which, however, falls within the domain of national legislation.

"In view of the fact that the system of patrimonial rights is regulated by the laws of each Unionist country, we do not see any obstacle to a single invention enjoying different systems of protection in different countries.

"The Contracting States of the Paris Convention have undertaken to protect the various types of industrial property of the nationals of the Contracting States (Art. 2). One of these types of industrial property which may enjoy protection in all countries of the Paris Union, relates to inventions protected in any country whatsoever. In Article 1, paragraph (2), this type of protection is called a 'patent'. This term describes in general all inventions protected by the law.

"In view of the fact that each member country of the Union itself establishes the manner and extent of the rights conferred on inventors or their heirs or assigns, it is obvious that the patent affords the holders different rights in each country. This is confirmed by the wording of Article 1 *in fine*, where it is mentioned that patents include various kinds of protection, some of which are quoted as examples. In view of the term 'et cetera' at the end of this article, one may conclude that the contracting countries envisaged the possibility of there being still other kinds of protection for inventions.

"In our view, certificates of authorship merely represent one kind of these patented inventions and, consequently, should be included in Article 1 of the Paris Convention.

"To summarize, I find that the present text of the Paris Convention also includes inventions protected in certain countries by certificates of authorship. However, in view of the possibility of a different interpretation, I consider that, for the sake of greater clarity, one should insert into paragraph (4) of Article 1 of the Paris Convention the term 'certificate of authorship'. In this way, the problems quoted in document PJ/27/2 (Introductory Report for the Study Group) would no longer present themselves, because it would be quite clear that the same provisions of the Paris Convention apply to inventions protected by a certificate of authorship as to those protected by a patent."

¹⁾ BIRPI Document No. PJ/27/9.

6. Statement by the Observers of the Union of Soviet Socialist Republics ¹⁾

"The Delegation of the USSR thanks the Director of BIRPI and the other organisers of this conference and takes the liberty of saying a few words.

"As you know, the USSR has a vast experience in regard to applications for certificates of authorship. This experience extends over more than 40 years.

"During this conference, the representatives from the Socialist Republic of Czechoslovakia, the People's Republic of Rumania, the People's Republic of Hungary, the People's Republic of Poland, the People's Republic of Bulgaria and the Federal Socialist Republic of Yugoslavia have given all necessary explanations in regard to the certificate of authorship. Therefore there is little that we have to add. Nevertheless, I would like to say a few words.

"As you know, we have forwarded to BIRPI all the documents concerning the certificate of authorship, including the Regulation in force in the USSR, and we have made our corrections to the documents sent to us by BIRPI regarding the certificate of authorship. We would have a great deal to say on the subject of our experience in the field of the certificate of authorship. But after the explanations that have been given here, many questions have already been answered. However, there remains one question, namely that of the deposit of patents. You know, for example, that we deposit patents in several countries, particularly in the United States of America and the United Kingdom, and these applications for patents are prepared on the basis of certificates of authorship. Now, the United States of America and the other countries granting patents can see for themselves that our deposits are well prepared and made normally. There is a close relationship between the certificates of authorship and the patents. That is why we think that the certificate of authorship, within the meaning of the Paris Convention, can be considered as a patent.

"We are at the disposal of the Delegations to reply to questions that they might wish to put. We hope that this conference will have provided useful information to all delegations present. Thanks to the publication that will be given to this information by BIRPI, the countries not represented in this conference will understand that a certificate of authorship, in the sense of the Paris Convention, is equivalent to a patent."

V. List of Participants

Experts

Bulgaria

Mr. Penko Penev, Director, Rationalization Institute, Sofia.
Mrs. Margarita Vassileva, Rationalization Institute, Sofia.

Czechoslovakia

Mr. Jaroslav Nemeček, President, Office for Patents and Inventions, Prague.
Mr. Otto Kunz, Master of Research, Law Institute, Czechoslovak Academy of Sciences, Prague.

Hungary

Mr. Emil Tasnádi, President, National Patent Office, Budapest.
Dr. Georges Pálos, Legal Adviser, National Patent Office, Budapest.
Dr. Mihály Krasznay, Head of Section, National Patent Office, Budapest.

Israel

Dr. Reinhold Cohn, Patent Attorney, Tel Aviv.

Netherlands

Mr. C. J. de Haan, President of the Patent Council, The Hague.

Poland

Mr. Ignacy Czerwiński, President, Patent Office, Warsaw.
Mr. Jan Dalewski, Head, Legal Section, Patent Office, Warsaw.

Rumania

Mr. Ion Anghel, Legal Adviser, Ministry of Foreign Affairs, Bucharest.
Mr. Lucian Marinete, Technical Director, State Office of Inventions, Bucharest.

United Kingdom of Great Britain and Northern Ireland

Mr. William Wallace, C. M. G., Assistant Comptroller of the Industrial Property Department, Board of Trade, London.

United States of America

Mr. Pasquale J. Federico, Examiner in Chief, Board of Appeals, U. S. Patent Office, Washington D. C.
Mr. Daniel V. de Simone, Director, Office of Invention and Innovation, U. S. Department of Commerce, Washington D. C.
Mr. William M. Gibson, Minister, U. S. Mission, Geneva.
Mr. George A. Tesoro, Counsellor, U. S. Mission, Geneva.

Yugoslavia

Mr. Vladimir Savić, Director, Patent Office, Belgrade.

Observers

Union of Socialist Soviet Republics

Mr. Eugène Artemiev, Vice-President, State Committee for Inventions and Discoveries of the USSR, Moscow.
Mr. Igor Tcherviakov, Head of the Section, State Committee for Inventions and Discoveries of the USSR, Moscow.

United International Bureaux for the Protection of Intellectual Property (BIRPI)

Prof. G. H. C. Bodenhausen, Director.
Dr. Arpad Bogsch, Deputy Director.
Mr. Ch.-L. Magnin, Deputy Director.
Mr. Georges Béguin, Counsellor.
Mr. Giulio Ronga, Counsellor.
Mr. Ross Woodley, Counsellor.

¹⁾ BIRPI Document No. PJ/27/14.

CONVENTIONS AND TREATIES

Convention on the Unification of Certain Points of Substantive Law on Patents for Invention

We are informed by the Secretary-General of the Council of Europe that Ireland signed, on March 11, 1964, the Convention on the Unification of Certain Points of Substantive Law on Patents for Invention.

This Convention has now been signed by the following ten countries: Belgium, Denmark, Germany (Fed. Rep.), France, Ireland, Italy, Netherlands, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland.

GENERAL STUDIES

The Regulation of Restraint of Trade in the Industrial Property Laws of EFTA States

By Dr. Fredrik NEUMEYER, Stockholm

*(Third Part) **

BOOK REVIEWS

La brevettabilità nel settore farmaceutico, aspetti in relazione al MEC. Centro studi economici e sociale dell'università internazionale degli studi sociali (Patentability in the field of pharmaceutical products; its aspects in relationship to the European Economic Community. Centre of economic and social studies of the International University of Social Studies). Rome, 1961; 24,5 × 7,5 cm.

The problem of patentability is of extreme importance not only in Italy but also within the sphere of the EEC. To emphasize this importance, the authors examine, in the first part of their study, the existing sources of law in this field; in the second part, they publish the laws cited and the more important draft laws and decrees.

With reference to the different interpretations of Articles 36 and 90 of the Rome Treaty¹⁾, the authors consider that the States Members of EEC are entirely free to regulate the protection of industrial property on their territories, but not to fix limits within which they may exercise their authority. It is a matter for the EEC Commission to determine if, in granting privileges for industrial property, the Member State has not overstepped the boundaries laid down in Article 36. In such cases, the Commission will issue "directives" or "decisions".

As the authors say, the position of Italy is unique within the EEC framework with regard to the non-patentability of processes for the manufacture of medicaments. In common with the majority of the countries of the world, the laws of the other Member States recognise, either implicitly or explicitly, the patentability of such processes. This situation could well be an obstacle to the development of rules of healthy competition which are at the roots of the EEC.

For this reason the authors hope that Italian legislation will soon provide for the grant of patents for processes for the manufacture of medicaments. They have, however, observed that there are two trains of thought in the interested industrial circles involved — one which would welcome the granting of true patents, even if they were to be accompanied by measures tending to eliminate monopolies in this particular field, and the other which calls for measures likely to eliminate, for all practical purposes, the effects of the patent and to recognise the right of remuneration for the inventor. These different points of view are explained by the fact that the pharmaceutical industry in Italy is divided into two branches, one of which produces basic pharmaceutical products and the other which manufactures the compounds among which, the real medical specialities are predominant. The latter are very numerous in comparison with the former, which, on the other hand, are very well organised for undertaking scientific research.

The authors review a number of decisions of the Patent Appeal Commission of the Court of Cassation which has judged patentable processes for the manufacture of medicaments and the Decree of January 26, 1957, of the Constitutional Court which declares to be constitutional Article 14 of the Decree of June 29, 1939, by which neither medicaments, whatever their nature, nor processes used in their manufacture are patentable.

The authors, however, conclude that this exceptional rule does not apply extensively. It concerns medicaments in the strict sense of the word, but does not apply to pharmaceutical products (in Italian *farmaci*) i. e. all chemical substances simple or complex, capable of producing any kind of effect on an organism. "Medicaments" or "remedies" are pharmaceutical products used therapeutically and which may, under favourable conditions, have beneficial effects on the course of illness.

This interesting study ends with the examination of economic problems, accompanied by statistics of the production of medicaments in the EEC countries, and, by the general conclusion that, if it is expedient,

¹⁾ See article quoted from Gotzen's work "*Propriété industrielle et Marché commun*", published in *La Propriété industrielle*, 1958, p. 69, and in *Industrial Property Quarterly*, 1958, No. 4, p. 24.

and even indispensable, to recognise patentability in the field of pharmaceutical products, it is nevertheless difficult to determine the limits of such protection.

This study makes an important contribution to the solution of questions which are still of current interest because, in Italy, they await regulation by law.

G. R.

NEWS ITEMS

Calendar of BIRPI Meetings

Place	Date	Title	Object	Invitations to participate	Observers
Geneva	May 20 to 26, 1964	Administrative Agreement, Working Party	Preparation of the Diplomatic Conference of Stockholm	Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Mexico, Sweden, Switzerland, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America	—
Bogotá	July 6 to 11, 1964	Latin American Industrial Property Congress	Discussion of industrial property questions of interest to Latin American States	All the States of Latin America	All Member States of the Paris Union outside Latin America
Geneva	September 28 to October 2, 1964	Interunion Coordination Committee	Program and budget of BIRPI	Belgium, Brazil, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Hungary, India, Italy, Japan, Morocco, Netherlands, Portugal, Rumania, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union or of the Berne Union
Geneva	September 30 and October 1, 1964	Consultative Committee and Conference of Representatives (Paris Union)	Triennial budget of the Paris Union	All Member States of the Paris Union	—
Geneva	October 12 to 16, 1964	Committee of Experts concerning the international classification of industrial designs	Study of an international classification of industrial designs	All Member States of the Paris Union	—

STATISTICS

General Statistics of Industrial Property for the Year 1962

Second Supplement

The statistics for Hungary which were not included in our general table of statistics published in *Industrial Property*, 1963, on pages 274 to 276, are now reproduced below:

HUNGARY

Principal patents applied for	1,933
Additional patents applied for	84
Total	2,017

Principal patents granted	800
Additional patents granted	22
Total	822
Designs deposited	294
Designs registered	288
National trademarks deposited	158
Foreign trademarks deposited	188
Total	346
National trademarks registered	154
Foreign trademarks registered	188
Total	342

